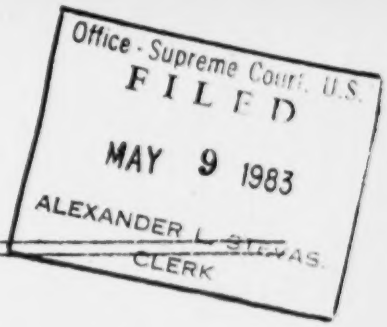
82-1898

CASE NO.



SUPREME COURT OF THE UNITED STATES

October Term, 1982

ROBERT J. KONDRAT

Petitioner

vs.

MELVIN C. SCHAEFER ET AL,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF OHIO, LAKE COUNTY

ROBERT J. KONDRAT, pro se
29121 Chardon Road
Willoughby Hills, OH 44092
Telephone (216) 944 0140

QUESTIONS PRESENTED FOR REVIEW

1) Are the actions of conspiracy and libel and slander within the scope of duties of public officials?

2) Is due process of law and equal protection of the laws denied when inferior courts disregard evidence, rules and procedures?

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CASE NO.

SUPREME COURT OF THE UNITED STATES

October Term, 1982

ROBERT J. KONDRAT

Petitioner

vs.

MELVIN G. SCHAEFER ET AL.

Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF OHIO, LAKE COUNTY

BRIEF OF PETITIONER FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Supreme Court of Ohio in Case No. 83-83 on March 16, 1983 overruled a motion for an order directing the court of appeals to certify its record and sua sponte dismissed the appeal for the reason that no substantial constitutional question existed.

On December 13, 1982, the Eleventh District Court of Appeals of Ohio, in Case No. CA 8-173 affirmed the judgment of the Lake County Common Pleas Court of October 15, 1980 in Case No. 77-CIV-0918 that sustained Respondent's Motion for Summary Judgment.

JURISDICTIONAL STATEMENT

A Petition for Writ of Certiorari is sought of the order and decision of the Supreme Court of Ohio entered March 16, 1983. The statutory provision confered on this court to review the order or decree in question by Writ of Certiorari, is the supremacy clause of the United States Constitution which provides that federal law shall prevail over state and local laws where state or local laws interfers with federal law.

CONSTITUTIONAL STATUTES AND PROVISIONS INVOLVED

The constitutional provision involved is the Fourteenth Amendment which guarantees that no person shall be deprived of life, liberty or property without due process of law and equal protection of laws.

STATEMENT OF THE CASE

Petitioner filed in the court of first instance a Complaint alleging that Respondents, acting in concert, committed libel and slander. The Respondents admitted to the truth of the allegations of acting in concert and libel and slander. The court of first instance rendered decisions, granting Respondent's Motion for Summary Judgment, saying that the actions were within the scope of their duties; and that Petitioner filed no evidence. Prior to the court's decisions, the Petitioner filed a Motion for Default because of failure of a Respondent to provide an Answer. The Petitioner also filed for a Change of Venue. The trial court did not hear Petitioner's Motion for Default or the request for Change of Venue.

Petitioner appealed the trial court's decisions to the Eleventh District Court of Appeals of Ohio, arguing that such actions are not within the scope of duties of public officials; and that due process of law and equal protection of the laws under the Fourteenth Amendment, was denied. The Appellate Court affirmed the Judgment of the trial court.

Petitioner appealed to the Supreme Court of Ohio citing the Fourteenth Amendment, that Petitioner was being denied due process of law and equal protection of the laws. The Supreme Court of Ohio rendered a decision ruling that no substantial constitutional question existed.

ARGUMENT

Because the inferior courts did not apply the same established procedures and rules with the Petitioner as it did with the Respondents, the Petitioner was denied due process of law and equal protection of the laws. The Petitioner has the same right to be heard on his Motions and requests to the courts as is the Respondents; and to have decisions rendered on the evidence in the record and the admission of Respondent's guilt.

Equal is alike; uniform; on the same plane or level with respect to efficiency, worth, value, amount or rights. People v. Hoffman, 116 Ill. 587, 5N.E. 600. Am Rep. 793. The equal protection of the laws of a state is extended to persons within its jurisdiction, within the meaning of the constitu-

tional requirement, when its courts are open to them on the same conditions as to others, with like rules of evidence and modes of procedure, for the security of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; when they are subjected to no restrictions in the acquistion of property, the enjoyment of personal liberty, and the pursuit of happiness, which do not generally affect others; when they are liable to no other or greater burdens and charges than such as are laid upon others; and when no different or greater punishnent is enforced against them for a violation of the laws. State v. Montgomery, 49Me. 192, 47 A. 165. The inferior courts have not been open to Petitioner on the same conditions as to the Respondents, with like rules of evidence and modes of procedure.

CONCLUSION

Its incredible that justice cannot be obtained in our inferior court judicial system despite the fact that there has been an admission to the truth of the allegations; and overwhelming evidence in the

record that substantiates the allegations. If justice is to be derived solely from the whims of individuals who do not take into account the evidence, do not follow rules and procedures, and do not recognize established laws, then there will be no law. Law will only exist as a figment in one's imagination.

Respectfully Submitted,

Robert J. Kondrat, pro se
29121 Chardon Road
Willoughby Hills, OH 44092
Telephone (216) 944 0140
Petitioner

Melvin G. Schaefer, et al.
Byron & Cantor
Attorney for Respondent
Suite 330
36100 Euclid Avenue
Willoughby, OH 44094
Telephone (216) 951 2303

APPENDIX A

OPINION AND JUDGMENT ENTRY

In The

COURT OF COMMON PLEAS

Of Lake County, Ohio

ROBERT J. KONDRAT Plaintiff -vs- MELVIN G. SCHAEFER, ET AL Defendants	) CASE NO. 77-CIV-0918

Plaintiff Kondrat instituted this action as a result of certain statements made by the Defendants Willoughby Hills officials.

In a previous action brought against said officials based on the same statements, the Plaintiff Kondrat did not join the action as a party. Macko v. Byron, Lake County Common Pleas Court Case No. 77-CIV-0620. In that action, the Court determined that the action of the Willoughby Hills officials was within the scope of their duties. Although Kondrat was not a party to that action he is now estopped from litigating that issue which

had been determined. (See Trautwein v. Sorgenfrei 58 O.S. 2d 493 (1979).)

Because the action of the Willoughby Hills officials was within the scope of their duties they had a privilege in making such statements and any action for libel or defamation would be barred. Costanzo v. Gaul, 62 O.S. 2d 106 (1980).

Therefore, the Defendants Motion for Summary Judgment is hereby sustained.

J. WARREN BETTIS, JUDGE

Dated: October 15, 1980

APPENDIX B

OPINION AND JUDGMENT ENTRY

In The

COURT OF APPEALS OF OHIO

ELEVENTH DISTRICT

Of Lake County, Ohio

ROBERT J. KONDRAT	)	CASE NO. CA 8-173
	)	
Plaintiff-Appellant	)	
	)	
-vs-	)	
	)	
MELVIN G. SCHAEFER, ET AL	)	
	)	
Defendants-Appellees	)	

JUDGES: JOSEPH E. O'NEILL,
JOSEPH DONOFRIO,JJ.,
of the 7th Appellate District,
and
William H. Victor, J.,
of the 9th Appellate District,
Sitting by Assignment in the
11th Appellate District

O'Neill, P.J.

On January 13, 1981, the appellant filed a notice of appeal in the office of the Clerk of Courts for Lake County, Ohio. Attached to this notice of appeal was a statement that "Plaintiff-appellant will not submit a Plaintiff-Appellant's Brief be-

cause one has already been filed in this court (November 10, 1980)."

On December 23, 1981, this court notified appellant that no assignments of error and brief had been filed.

On or about December 28, 1981, the appellant furnished us with a brief. In this brief, appellant directs attention to evidence which was denied admission in other cases. This brief does not specifically address itself to the judgment appealed from. The appellant devotes most of his contention to his opinion that the judiciary is schooled in deceit, dishonesty and insincerity. This attitude prevails throughout the trial of this case. When appellant was faced with a motion for summary judgment in the trial court, he did not respond with affidavits. He filed a brief which, in addition to editorialism and unfounded criticism, was unsupported and wandering.

In the face of a motion to dismiss filed by the appellees on November 5, 1981, it was our suggestion that appellant file the brief which he did

file on December 28, 1981. As we have previously pointed out, this brief was of no value as to the merits of the case.

We could but we shall not rise to the unfounded and ignorant criticism of the judiciary and the legal profession as expounded by the appellant. He has seen fit to inject himself into the system of justice without any effective assistance, he has fought or ignored established procedures. When a helping hand is extended, as was done in this case, he bites the hand.

We have reviewed the judgment and proceedings of the trial court and without any assistance from the appellant, we find substantial justice. We affirm that judgment.

Judgment affirmed.
Entry Dated October 23, 1980.

Donofrio, J., concurs.
of the 7th Appellate District
and
Victor, J.,
of the 9th Appellate District,
Sitting by Assignment in the
11th Appellate District

APPROVED:

JOSEPH E. O'NEILL
Presiding Judge.
FOR THE COURT

APPENDIX C

RULING

In The

SUPREME COURT OF OHIO

ROBERT J. KONDRAT	)	To Wit: March 16, 1983
	)	
Appellant	)	No. 83-83
	)	
-vs-	)	
	)	
MELVIN G. SCHAEFER, ET AL	)	
	)	
Appellees	)	

This cause, here on appeal as of right from the Court of Appeals for Lake County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to Clerk of the Court of Appeals for Lake County for entry.

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

A P P E N D I X D

Received 12/20/77

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT
29121 Chardon Road
Willoughby Hills, Ohio 44092

Plaintiff

- vs -

BARRY M. BYRON, Esq.
420 Lakeshore Trust Building
State and Main Streets
Painesville, Ohio 44077

MELVIN G. SCHAEFER
c/o Willoughby Hills City Hall
35405 Chardon Road
Willoughby Hills, Ohio 44094

SABBY J. DEFRANK
2824 Orchard Drive
Willoughby Hills, Ohio 44094

ROBERT MOOREHEAD
30151 Eddy Road
Willoughby Hills, Ohio 44094

MORTON O'RYAN
35400 Hanna Road
Willoughby Hills, Ohio 44094

LAWRENCE O'DONNELL
2941 Rockefeller Road
Willoughby Hills, Ohio 44094

GEORGE KRAINCIC
3010 Marcum Road
Willoughby Hills, Ohio 44094

MARILYN MONZULA
2767 Oak Street
Willoughby Hills, Ohio 44094

PAUL MITROVICH
Shoregate Office Building - Suite 200
Wickliffe, Ohio 44092

Defendants

CASE NO. 77CIV0918

THE HONORABLE CLAIR, JR.

FILED
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MELVIN G. REED
CLERK OF COURTS
LAKE COUNTY, OHIO

COMPLAINT WITH JURY DEMAND ENDORSED

* * *

Now comes Plaintiff, ROBERT J. KONDRAT, and for his Complaint states, alleges and avers as follows:

COUNT I

1. At all times material herein, Plaintiff was a circulator and/or signer of recall petitions being circulated and signed by the citizens of Willoughby Hills, Ohio, which petitions sought the removal from office of Defendant Schaefer (Mayor) and Defendants Defrank, Moorehead, O'Ryan, O'Donnell and Kraincic (councilmen). At all times material herein, Defendant Byron was the Law Director for the City of Willoughby Hills; Defendant Monzula was the Clerk of Council for the City of Willoughby Hills; and Defendant Mitrovich was the Prosecuting Attorney for Lake County, Ohio.

2. On or about August 19, 1976, Defendant Schaefer, maliciously and with intent to injure, ridicule and defame Plaintiff, caused to be published in a newspaper known as The Cleveland Plain Dealer the following false material and statements concerning Plaintiff and a group of persons with which Plaintiff was known to associate:

> "Willoughby Hills Mayor, Melvin G. Schaefer, lashed out yesterday at residents circulating recall petitions against him, threatening to sue them over "false charges."
>
> "Schaefer, who took office January 1, said "A small, self-appointed committee of losers" is collecting the signatures to have a vote on ousting him and five councilmen."
>
> "He charged, "They are primarily disgruntled backers of the candidates who lost by large margins in the mayoral and councilmanic elections and are seeking a re-hash of last year's elections."
>
> ***
>
> "The statements are derogatory against me everyone signing those petitions is endorsing those charges. All six are false and those involved can be answerable in a Court of law."

3. Thereafter, Defendant Schaefer continued to characterize Plaintiff and the other circulators and/or signers of said recall petitions as "losers," "sore losers," "mislead citizens," and as persons who were perpetrating fraud and disception upon the citizens of Willoughby Hills. Defendant Schaefer publically accused Plaintiff and other persons circulating and signing said recall petitions under "false pretenses" with "misrepresentations" to the public and

as part of a "witch hunt."

4. The materials so published and the statements so made concerning Plaintiff and others are defamatory and false.

5. At the time of such publication and such statements, Defendant Schaefer knew or could, within the exercise of reasonable care, have known or ascertained that said statements and material was untrue. Furthermore, said Defendant made such statements and published such material willfully and with actual malice toward Plaintiff and others, with an intent to embarrass, ridicule and defame them.

6. By reason of such publication and such subsequent statements, Plaintiff was injured in his reputation, his business, and his credit and was made to suffer great pain, distress and mental anguish to his damage in the amount of One Hundred Fifty Thousand Dollars ($150,000.00).

COUNT II

7. Plaintiff incorporates by reference all of the allegations contained in Paragraphs 1 through 6 of Count I of this Complaint as if fully rewritten herein at length.

8. On or about September 3, 1976, and thereafter, Defendants SCHAEFER, DEFRANK, MOOREHEAD, O'RYAN, O'DONNELL, KRAINCIC and MONZULA did maliciously and with intent to ridicule, defame and injure Plaintiff and others cause to be prepared and to be circulated publicly by United States Mail to the citizens of Willoughby Hills, Ohio, a publication concerning Plaintiff and others, which included the following statements:

> "The mayor and five councilmen stated that the petitions had been circulated with arguments that the recall attempt was merely a vote of confidence for these six officials. They stated that the circulators of the petitions have misled some residents of the city and have obtained signatures under false pretenses. The mayor and five councilmen added that residents who wish to do so may withdraw their names from these petitions by calling the Clerk of Council at Willoughby Hills City Hall, 946-1234, to make necessary arrangements for the removal of their names."

9. With this publication and in subsequent statements made to the news media and openly in council meetings, said Defendants made false and defamatory

statements to the affect that Plaintiff and others had committed an indictable offense involving moral turpitude, which subjects Plaintiff, as an offender, to infamous punishment.

10. Such publication and subsequent statements concerning Plaintiff are false and defamatory. At the time of such publication and statements, said Defendants knew or could, with the exercise of reasonable care, have known or ascertained that the content thereof was untrue and injurious.

11. By reason of such publication and statements, Plaintiff was injured in his reputation, business and credit and suffered great pain, emotional distress and mental anguish to his damage in the amount of One Hundred Fifty Thousand Dollars ($150,000.00).

COUNT III

12. Plaintiff incorporates by reference herein all the allegations contained in Paragraphs 1 through 11 of Counts I and II of the Complaint as if fully re-written herein at length.

13. On or about September 15, 1976, Defendant Byron, maliciously and with intent to ridicule, injure and defame Plaintiff caused to be published by letter certain false statements accusing Plaintiff, and others, of committing an indictable offense involving moral turpitude which subjects Plaintiff to infamous punishment in accordance with the laws of this State. A copy of said letter is attached hereto as Exhibit A and incorporated herein as if fully rewritten at length.

14. On or about September 23, 1976, Defendant, Byron, in concert with the other Defendants named herein except Defendant Mitrovich, maliciously and with intent to injure, ridicule and defame Plaintiff and others read in an open meeting of the City Council of Willoughby Hills the letter attached hereto as Exhibit A.

15. The statements in said letter so published and the words so spoken at said meeting of the City Council were false and defamatory and at the time said statements were made and said letter published, the Defendants except Defendant Mitrovich, and each of them, knew or could, with the exercise of reasonable care,

have known or ascertained that the content thereof was untrue.

16. Said statements and said letter were willfully published by Defendants, and each of them, with actual malice toward Plaintiff.

17. By reason of such letter and such statements, Plaintiff was injured in his business, credit and reputation and was made to endure and suffer great pain, emotional distress and mental anguish, all to his damage in the amount of One Hundred Fifty Thousand Dollars ($150,000.00).

COUNT IV

18. Plaintiff incorporates herein by reference Paragraphs 1 through 17 in Counts I through III of this Complaint as if fully rewritten here at length.

19. On or about December 18, 1976, Defendant Mitrovich, maliciously and with the intent to injure, ridicule and defame Plaintiff caused to be circulated publicly in the newspaper known as The Telegraph a statement to the affect that Plaintiff had committed an indictable offense involving moral turpitude which subjected Plaintiff to infamous punishment. Defendant Mitrovich, while Prosecuting Attorney for Lake County and while criminal charges were pending against Plaintiff in connection with his activities as a recall petition solicitor, stated in connection with Plaintiff:

"This is no minor offense. This is a deliberate kind of thing."

20. The matter so published concerning Plaintiff is false and defamatory. At the time of such publication, said Defendant knew or could, with the exercise of reasonable care, have known or ascertained that the matter was untrue and injurious to Plaintiff.

21. By reason of such publication, particularly by reason of the office held by said Defendant at the time of such publication, Plaintiff was injured in his business, credit and reputation and was made to endure and suffer great pain, emotional distress and mental anguish to his damage in the amount of One Hundred Fifty Thousand Dollars ($150,000.00).

WHEREFORE, with respect to Counts I through III of this Complaint, Plaintiff demands judgment against Defendants Byron, Schaefer, Defrank, Moorehead, O'Ryan, O'Donnell, Kraincic, and Monzula, jointly and severally, in the amount of $450,000.00 for compensatory damages, in the amount of $500,000.00 for punitive damages, along with interest thereon at the maximum rate allowable under law, reasonable attorney fees, and the costs of this action. In addition, with respect to Count IV of the Complaint, Plaintiff demands judgment against Defendant Mitrovich, in the amount of $150,000.00 in compensatory damages, in the amount of $500,000.00 for punitive damages, along with interest thereon at the maximum rate allowable under law, reasonable attorney fees, and the costs of this action.

HERBERT L. BRAVERMAN
Attorney for Plaintiff, Robert J. Kondra
Three Commerce Park Square - #715
Cleveland, Ohio 44122
464-7000

JURY DEMAND

The Plaintiff demands a jury trial of all issues.

HERBERT L. BRAVERMAN
Attorney for Plaintiff, Robert J. Kondra

September 15, 1976

Honorable Ted W. Brown
Ohio Secretary of State
State House
Columbus, Ohio 43215

Re: City of Willoughby Hills, Removal Recall Petitions

Attention: Elections Office

Dear Mr. Brown:

On September 2, 1976 petitions demanding the "immediate recall and removal" of the Mayor and five (of seven) councilmen of the City of Willoughby Hills, Ohio were filed with the Clerk of Council. For a variety of reasons, these petitions have been determined to be invalid by the Clerk pursuant to the Willoughby Hills City Charter.

In connection with the conduct of procedures necessary to determine the validity of the subject petitions, City officials have uncovered information leading to the following preliminary conclusions, co-wit:

1) Systematic and deliberate misrepresentations were made to prospective signers of the petitions concerning their content and legal effect in violation of Section 3599.14 of the Revised Code of Ohio.

2) Misrepresentations of fact were made in attempting, sometimes successfully, to influence citizens to sign these petitions. These misrepresentations were to the effect that an "area shopping center" and a large discount store were proposed and authorized by the Mayor and City Council for future construction and operation in Willoughby Hills. There are no such proposals. City officials have evidence that residents were persuaded to sign these petitions because of these misrepresentations. These misrepresentations of fact were widespread and apparently orchestrated by prior design.

These facts tend to show a violation of Section 3599.14 of the Revised Code and suggest the possibility of violations of those sections of Chapter 29 (the Ohio Criminal Code) relating to criminal complicity.

3) Signers were permitted by the circulators of the petitions to sign more than once in violation of Section 3599.13 of the Ohio Revised Code.

4) Persons unqualified to sign were knowingly permitted by the circulators of the petitions to sign their names in violation of Section 3599.13 of the Ohio Revised Code.

5) A person was permitted by a circulator to sign a name other than her own in violation of Section 3599.13 of the Ohio Revised Code; the circulator who obtained the forged signature then made a false affidavit concerning the forged signature in violation of Section 3599.14 of the Ohio Revised Code.

6) Part petition papers were filed with the Council Clerk which contained a forgery in at lease one instance thus far discovered in violation of Section 3599.14 of the Ohio Revised Code.

Because these violations appear to be widespread and systematic it is my judgment that a thorough investigation of these apparent irregularities is necessary.

Please consider this letter as the request by my office that you, as chief election officer of the state, undertake an investigation of these irregularities pursuant to the provisions of Section 3501.05 (M) of the Revised Code. I appreciate that this is a busy time of year for your office, however, the public interest would best be served by prompt investigation and, if warranted, prosecution of all guilty parties involved. You are assured of the full cooperation of the Willoughby Hills City Administration with your representatives in this investigation.

Pending final determination of this matter by prosecuting authorities, I have instructed the Clerk to impound these petitions and to permit no inspection of them.

The favor of an early reply is respectfully requested.

Very truly yours,

Barry M. Byron
Law Director
City of Willoughby Hills, Ohio

MB/m

EXHIBIT A, Page 2

cc: Board of Elections of Lake County

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT Plaintiff -vs- MELVIN G. SCHAEFER, et al. Defendants	)	CASE NO. 77 CIV 0918 MOTION FOR DEFAULT JUDGEMENT

LAKE CO. CLERK OF COURTS
FILED
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Plaintiff moves the court for the entry of a default judgement, in the amount as asked for in the COMPLAINT (in the amount of $450,000 for compensatory damages, in the amount of $500,000 for punitive damages), plus interest, costs and attorneys fees, because of the Defendant Ms. Marilyn Monzula's failure to ANSWER or otherwise defend as provided by the Civil Rules, and that the Defendant is neither incompetent nor minor , nor a Defendant in the military service of the United States.

Respectfully submitted,

ROBERT J. KONDRAT
Plaintiff

SERVICE

A copy of the foregoing MOTION FOR DEFAULT JUDGEMENT has been served upon Ms. Marilyn Monzula, Willoughby Hills City Hall, 35405 Chardon Road, Willoughby Hills, Ohio 44094, by mailing same by Pd ~ 6840881 certified U.S. Mail, postage pre-paid, on this 9th day of October, 1980.

Robert J. Kondrat, Plaintiff

cc: News Media

FILED
COURT OF APPEALS
OCT 23 1980
ANDY J. TOTH
CLERK OF COURT
LAKE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT
29121 Chardon Road
Willoughby Hills, OH 44092

Plaintiff-Appellant

-vs-

MELVIN G. SCHAEFER, ET AL.
35405 Chardon Road
Willoughby Hills, OH 44094

Defendant-Appellees

CASE NO. 77 CIV 0918

NOTICE OF APPEAL

Notice is hereby given that Robert J. Kondrat, Plaintiff-Appellant, hereby appeals to the Eleventh District Court of Appeals, the JUDGMENT ENTRY of Defendant-Appellees' MOTION FOR SUMMARY JUDGMENT, for the captioned case, entered in this action on the 15th day of October, 1980, by Judge J. Warren Bettis, Lake County Courthouse.

Robert J. Kondrat

SERVICE

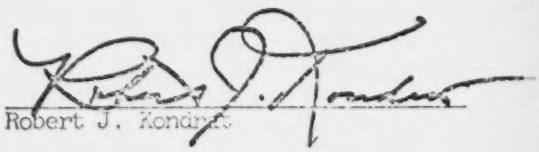
A copy of the foregoing NOTICE OF APPEAL was mailed this 20th day of October, 1980, to Barry Byron, 330 Lake West Medical Bldg., 36100 Euclid Ave., Willoughby, OH 44094, by regular first class mail, U.S. postage prepaid.

Robert J. Kondrat

Assignment of Error attached
cc: News Media

ASSIGNMENT OF ERROR

Plaintiff-Appellant asks that the court reverse the lower court's JUDGMENT ENTRY sustaining the Defendant-Appellees' Motion for Summary Judgment, because the actions of the Willoughby Hills officials was NOT within the scope of their duties nor were they privileged in making such statements, as was Opinionated by the lower court. Conspiracy has never been within the scope of any public officials duties.



Robert J. Kondrat

IN THE COURT OF APPEALS

LAKE COUNTY, OHIO

ELEVENTH DISTRICT

CASE NO. 8-134

FILED
COURT OF APPEALS
NOV 10 1980
ANDY J. TOTH
CLERK OF COURT
LAKE COUNTY, OHIO

ROBERT J. KONDRAT
29121 Chardon Road
Willoughby Hills, OH 44092
Telephone (216) 944-0140

Plaintiff-Appellant

-vs-

MELVIN G. SCHAEFER, ET. AL.
35405 Chardon Road
Willoughby Hills, OH 44094

Defendants-Appellees

PLAINTIFF-APPELLANT'S BRIEF

ROBERT J. KONDRAT, Pro Se
29121 Chardon Road
Willoughby Hills, OH 44092
Telephone (216) 944-0140

BARRY M. BYRON
Attorney for Appellees
Byron & Cantor
Suite 330
36100 Euclid Avenue
Willoughby, OH 44094
Telephone (216) 951-2303

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APPENDIX

B.M. Byron's letter of September 15, 1976.....EXHIBIT A

Four Pages of Trial Transcript, Case No. 76 CR 473.....EXHIBIT B

ASSIGNMENT OF ERROR

Plaintiff-Appellant asks that the court reverse the lower court's JUDGMENT ENTRY sustaining the Defendant-Appellees' Motion for Summary Judgment, because the actions of the Willoughby Hills officials was NOT within the scope of their duties nor were they privileged in making such statements, as was Opinionated by the lower court. Conspiracy has never been within the scope of any public officials duty.

STATEMENT OF THE CASE

The Plaintiff-Appellant on December 15, 1977, in the Court of Common Pleas, in Lake County, filed a complaint alleging the Defendant-Appellees, that on or about September 15, 1976, the Defendant-Appellees, maliciously and with intent to ridicule, injure and defame Plaintiff-Appellant caused to be published by letter certain false statements accusing Plaintiff, and others, of committing an indictable offense involving moral turpitude which subjects Plaintiff-Appellant to infamous punishment in accordance with the laws of this State.

And, on or about September 23, 1976, the Law Director of the City of Willoughby Hills, in concert with others, maliciously and with intent to injure, ridicule and defame Plaintiff, and others, read in an open meeting of the City Council of Willoughby Hills, the letter of September 15, 1976.

A hearing was held in Lake County Court House. Visiting Judge J. Warren Bettis heard argument and later returned an OPINION sustaining the Defendant-Appellees Motion for Summary Judgment, for the reason that the action of the Willoughby Hills officials was within the scope of their duties.

ARGUMENT

Section 8.31 of the City of Willoughby Hills Charter states in part, the following :

> "If any petition be found insufficient or incorrect in form or substance, the petitioners shall be notified of the findings, including what particulars have been found defective. Any petition may be amended at anytime within a ten (10) day grace period after the notification and refiled upon additional forms in the manner provided for filing the original, including the repayment of filing fees, if any."

(1.) Date of Publication of Defendant's false accusations.

(2.) Date on which Defendant's false accusations were spoken.

(3.) Date on which petitions were filed.

* This calendar of September, 1976 was barred from use in a trial by Judge Parks in the case of Macko v. Byron, Lake County Common Pleas Court, Case No. 77 CIV 0620. Why would a Judge object to a jury seeing this?

The above calendar of events diagrams the Defendants' conspiracy to have Plaintiff indicted, arrested, jailed and made to stand trial. This segment of the conspiracy will deal only with the Defendants' false accusations.

The requirements for amending petitions are set forth in the first paragraph of the ARGUMENT. Diagrammed numbers 1 and 2 sets forth the dates on which the Defendants' false statements were printed and spoken. Number 3 sets forth the date on which the petitions were filed.

It's obvious to any viewer of this calendar, that the Defendants had knowledge of alleged petition defects during the petitioning period (See diagrammed Nos. 1 and 2, and EXHIBIT A). It's a fact that alleged petition defects were to be made known to the petitioners so that petitions could be amended (See 1st par. of ARGUMENT). It's a fact that Plaintiff was not notified of any alleged defects (See State of Ohio vs. Robert Kondrat, Case No. 76 CR 473, Lake County Common Pleas Court, EXHIBIT B). It's a fact that Plaintiff, and others, were indicted and arrested for alleged petition defects. It's a fact that the Defendants' false accusations were to fabricate criminal activity against Plaintiff and others (Again see State of Ohio vs. Robert Kondrat). It's a fact that the Defendant-Appellees have not presented any evidence to substantiate the truth of the Defendants' statements. The only material presented by the Defendants thus far has been the fabricated criminal activity against Plaintiff, which a criminal trial court has already recognized as being just that and ruling that it is not admissable in a court of law.

To all of the above the lower court has said:

> "Because the action of the Willoughby Hills officials was within the scope of their duties, they had a privilege making such statements and any action for libel or defamation would be barred."

Conspiracy has never been in the scope of duties of a governmental body, nor do its officials have the privilege of making false accusations for the

purpose of conspiring to fabricate criminal activity. It was the duty of the Willoughby Hills officials to notify Plaintiff of any alleged petition defects, as required by the City Charter. In not doing so, the officials acknowledged that there were no defects, thus branding their statements as false. It's obvious that there could not be any truth to any Defendants accusations made prior to the September 24, 1976 date, for the simple reason that the petitioners still had the opportunity to amend any petition, providing they were notified of the particulars as required by City Charter.

The Plaintiff's subsequent indictment, arrest, jailing and trial for alleged petition defects resulted from the Defendants' conspiratorial scheme of fabricating criminal activity. As indicated by the calendar, the Defendants had knowledge of supposedly alleged petition defects. They did not communicate this knowledge to the Plaintiff, or others, as required by City Charter. Instead, they waited until the petitioning period was over, then brought forth the false accusations and sought indictments. The lower court's decision said that such action by the officials is within the scope of their duties. A criminal court trial has already said No, and the Plaintiff now says NO.

For this court's information, conspiracy has been defined as follows (emphasis added):

1) "A consultation or agreement between two or more persons, either falsely to accuse another of a crime punishable by law; or wrongfully to injure or prejudice a third person, or any body of men, in any manner; or to commit any offense punishable by law; or to do any act with intent to prevent the course of justice; or to effect a legal purpose with a corrupt intent, or by improper means. Hawk.P.C. c72 S 2; Arch b. Crim. Pl. 390. State v. Murphy, 6 Ala. 765, 41 Am. Dec. 79."

2) "The essence of conspiracy is an agreement, together with an overt act, to do an unlawful act, or do a lawful act in an unlawful manner. Cooper v. O'Connor, 99 F. 2d 135, 142, 69 App D.C. 100, 118 A.L.R. 1440."

The aformentioned facts of the Defendant-Appellees conspiratorial scheme are diagrammed and given. The conspiracy's object was to injure Plaintiff-Appellant. Its accomplishments were the secret indictments, arrest, incarceration and trial of the Plaintiff-Appellant.

CONCLUSION

The inability and/or refusal of the judiciary to relate to the simplest of facts, and use common sense, places the judicial system beyond the reach of those for whom this body is to serve. Whether this is done intentionally or not does not matter now. What matters is the fact that the judicial system has been a total failure.

This failure is reflected not only in this case, but at every level of life where the judicial, and its companion brother the legal profession, are entrenched and voice decisions that satisfy their own interests. This is contrary to the principals and tradition established by the Constitution of the United States.

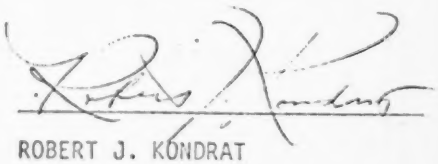
Understandably, the administrators of justice are schooled and brought through the ranks where deceit, dishonesty and insincerity are prevalent. These tools are essential to a profession that must pit one against another, like contestants in an arena, so that the spoils may be reaped. Without these tools, the judicial administrators would not be able to justify their existence.

But, unfortunately, the havoc this group exerts upon a productive society does not stop with the taking of the spoils. The contests arranged by the judiciary invariably become tainted with corruption. This barbutoism does not go unnoticed by the people. These same people are left with a feeling of helplessness, discontentment, frustration and without a sense of direction. Eventually, confidence is eroded.

Even the uniqueness of the judicial/legal brotherhood, who have the power and ability to conceal their purpose, and to protect their own, is laid bare when this body must probe the infinite darkness of the law to escape confrontation with reality. Such judicial behavior is not only a disgrace to our flag but is useless to humanity.

This court is asked to relate itself to simple facts, such as a calendar, and to the occurence of events aforementioned, and then to use just plain common sense to arrive at a decision reversing the lower court's decision. The relief sought is the same as stated in the complaint.

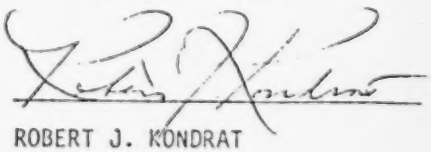
Respectfully Submitted,



ROBERT J. KONDRAT

SERVICE

A copy of the foregoing PLAINTIFF-APPELLANT'S BRIEF was mailed this 4th day of Nov, 1980, by regular U.S. mail, postage prepaid, to Barry M. Byron, 330 Lake West Medical Bldg., 36100 Euclid Avenue, Willoughby, OH 44094.
Resubmitted 12/28/81. RJK



ROBERT J. KONDRAT

cc: News Media
Attorney General of the U.S

FILED
COURT OF APPEALS
NOV 5 1982
ANDY J. IOTIN
CLERK OF COURT
LAKE COUNTY, OHIO

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

LAKE COUNTY, OHIO

ROBERT J. KONDRAT Plaintiff-Appellant -v- MELVIN SCHAEFER, ET AL Defendant-Appellees	)	CASE NO. CA 8-173 APPELLANT'S INQUIRY TO THE COURT NO.3 AND MOTION FOR SUMMARY JUDGMENT

NOV [illegible]

In August, 1982 the Appellant requested of the court to furnish information as to when the court could be expected to act on the captioned case. As yet, there has been no response.

Since the Appellees have already admitted to the truth of the allegations, Appellant asks that the court grant an immediate Summary Judgment, as specified in the Complaint.

Robert J. Kondrat

SERVICE

Copies of the foregoing INQUIRY NO. 3 AND MOTION FOR SUMMARY JUDGMENT have been sent by regular first class mail, postage prepaid, on this 2nd day of November, 1982, to the following:

U.S. Attorney General Smith
The Department of Justice
Washington, D.C. 20530
(CERTIFIED RRR #P17 5878518)

Office of The Clerk
U.S. District Court
Cleveland, OH 44114
(TO BE FILED AND MADE A MATTER
OF RECORD IN CASE NO. C82-896)

Byron & Cantor
36100 Euclid Avenue
Willoughby, OH 44094

cc: News Media

Baker & Hostetler
3200 Nation City Center
Cleveland, OH 44114

Albert L. Bell
Ohio State Bar Association
33 W. 11th Avenue
Columbus, OH 43201

McNamara, Gemperline & Wager Co.
Suite 608 Mall Bldg., 118 St. Clair Ave.
Cleveland, OH 44114

James Sweeney
630 Bulkley Building
Cleveland, OH 44115

NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO

FROM

THE COURT OF APPEALS, EVEVENTH APPELLATE DISTRICT

APPELLATE COURT CASE NO. CA 8-173

FILED
COURT OF APPEALS
JAN 4 1983
ANDY J. TOTIN
CLERK OF COURT
LAKE COUNTY, OHIO

ROBERT J. KONDRAT	)	CASE NO.
Plaintiff-Appellant	)	
vs.	)	NOTICE OF APPEAL
MELVIN G. SCHAEFER, et al,	)	
Defendant-Appellees	)	

RECEIVED
JAN

Plaintiff-Appellant gives NOTICE OF APPEAL to the Supreme court of Ohio from the OPINION AND JUDGMENT ENTRY entered in the Court of Appeals, Eleventh District, on the 13th day of December, 1982. The case did not originate in the Court of Appeals; and the case is one that involves a substantial Constitutional question.

Respectfully Submitted

Robert J. Kondrat
29121 Chardon Road
Willoughby Hills, OH 44092

S E R V I C E

Copies of the foregoing NOTICE OF APPEAL were mailed this 3rd day of January, 1983, by U.S. mail, postage prepaid, to the following:

United States Attorney General Smith
The Department of Justice
Washington, D.C. 20530

CERTIFIED RRR #P 287 316 114

Office of the Clerk
United States District Court
Cleveland, OH 44114

(TO BE FILED AND MADE A MATTER OF RECORD IN CASE NO. C82-696)

IN THE SUPREME COURT OF OHIO

COLUMBUS, OHIO

CASE NO. ____ 83-83

***

ON APPEAL FROM THE ELEVENTH JUDICIAL DISTRICT

SUMMIT COUNTY

CASE NO. CA 8-173

***

CASE ORIGINATING IN LAKE COUNTY COMMON PLEAS COURT

LAKE COUNTY

CASE NO. 77 CIV 0918

FILED
JAN 18 1983
SUPREME COURT OF OHIO
THOMAS J. CLARIZMAN Clerk

****

ROBERT J. KONDRAT,

Plaintiff-Appellant

-vs-

MELVIN G. SCHAEFER, ET AL,

Defendant-Appellees

MEMORANDUM OF JURISDICTION
AND
APPELLANT'S BRIEF

****

ROBERT J. KONDRAT, pro se
29121 Chardon Road
Willoughby Hills, OH 44092
Telephone (216) 944 0141

BYRON & CANTOR
Attorney for Defendant-Appellee's
Suite 330
36100 Euclid Avenue
Willoughby, OH 44094
Telephone (216) 951 2303

JAN 21 1983

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STATEMENT OF FACTS AND/OR CASE

Plaintiff-Appellant (Appellant) filed in the originating court a Complaint alleging that Defendant-Appellees (Appellees) committed libel and slander. Nine Defendants were named in the multi-party action. A court decision in the first court fragmented the case into two cases. One with eight Defendants, and another with one Defendant. We are concerned here with the case having eight Defendants.

The trial court in its first opinion dismissed Defendant Byron. Motions for dismissal of other Defendants were overruled. Appellant's two requests for continuance were overruled. Appellant filed Motion for Default because of Defendant Monzula's failure to answer. Appellant then filed for Change of Venue. The court then in its Opinion and Judgment Entry sustained the Defendants' Motion for Summary Judgment; and remained silent on Appellant's Motion for Default, and on Appellant's filing for Change of Venue.

Appellant appealed the Summary Judgment Opinion to the Eleventh District Court. The trial court then granted Defendant Monzula Leave to File her Answer. This Leave coming nearly four years after filing of Appellant's Complaint. Appellant questioned the propriety of the court's judgment due to the time span involved, and because the judgment was typed on the stationery of the law offices of Byron & Cantor and postmarked Lisbon, Ohio. Thereafter, the trial court with its Judgment Entry, granted Defendants' Motion for Summary Judgment, coming again on the stationery of the law offices of Byron & Cantor.

Appellant also appealed the trial court's second Summary Judgment decision to the Eleventh District Court of Appeals. As reason for the appeal, the Fourteenth Amendment was cited. As a point of clarification to this court, there

were now two appealed decisions before the Appellate Court on the same case. The reason for this was because both decisions appeared to be adverse to the Appellant, and the Appellant not being an attorney, was not certain whether both had to be appealed. So to be on the safe side, both decisions were appealed.

An Appellant's Brief was filed on the first appeal. None was submitted with the second appeal and the Appellate Court's attention was directed to the fact that one had already been submitted with the first appeal. The Appellate Court indicated that none was in the record, and the Appellant's Brief was then re-submitted a second time. In the first appeal, the Appellate court sustained Appellees' Motion for Dismissal for the reason that the entry appealed from was not a final appealable order. On the second appeal which came nearly a year after resubmission of Appellant's Brief, the Appellate Court affirmed the judgment of the trial court.

ARGUMENT

The record shows that the Appellees have admitted to the truth of the allegations of libel and slander. Also in the record, is the evidence. But, despite the conclusive proof of guilt, the Appellate Court has ruled against the Appellant saying that "Appellant has injected himself into the system without any effective assistance and has fought or ignored established procedures, and when a helping hand is extended, as was done in this case, he bites the hand".

First of all, the Appellant did not inject himself into the system. The Appellant was dragged into the system by the system's unscrupulous members who thought they could get away with something. These members thought that they could commit modern day tyranny and hide behind the judicial cloak. So far they have been successful.

Secondly, the Appellant did seek effective assistance. But due to fear of counsel's career by becoming involved in litigation stemming from the Recall of public officials, competent assistance could not be had. Consequently, the Appellant had to represent himself. Appellant did not wish this upon himself. The Appellant is no attorney and the courts have known this. Appellant has not fought or ignored established procedures. Appellant has, to the best of his knowledge, tried to conform with established procedures. Appellant's communication with the courts that arein the record, shows that Appellant has tried to be as cooperative as possible. If anything, it has been the courts which appear to have ignored established procedures. The Appellant is a layman who is not skilled in law and must be accepted in his unconventional ways.

The Appellate Court has made a big ado about Appellant's Brief which was not, and then was furnished. Appellant did not know that a resubmission of this pleading was required. It was assumed that whatever was in the record need not be presented again. Isn't this a logical assumption to make? This is not fighting or ignoring procedures as the court contends. It would appear that it was the court who circumvented procedures by remaining silent for so long after it had been informed that there would be no Appellant's Brief.

The Appellate Court in its opinion stated that "when Appellant was faced with a Motion for Summary Judgment, he did not respond with affidavits". Frankly, the Appellant does not understand the purpose of affidavits or why they are required in some pleadings and not in others. Presumably, the affidavit question will always remain a mystery to Appellant.

The Appellate Court indicated that Appellant's Brief, "in addition to editorialism and unfounded criticism, was unsupported and wandering". The court should recognize the fact that Appellant is no attorney. If his brief

editorializes, criticizes, wanders or is unsupported, it does so because he has not had the training to present it in the fashion wanted by the court. The Appellant has presented it the best way known to him, and as a layperson would. It's unfortunate that the court is unable to cope with plain common sense. But neither is the Appellant capable of understanding a garbled English spiced with foreign words as used by the courts and legal profession. If Appellant's ways are not suited for the court, or if something is stated which offends the court, then the Appellant regrets that he can't do better. However, the Appellant intends to say it as he sees it. If the truth hurts, it will have to be borne. For it was the courts and the legal profession which brought this upon themselves. If there was any editorialsm, criticism, unsupported and wandering dialogue, then one only needs to look at the lower courts' opinions.

The Appellate court stated that "we could but we shall not rise to the unfounded and ignorant criticism of the judiciary and the legal profession as expounded by the Appellant". The Appellant's response to this is: what makes the judiciary and the legal profession so sacred that it is beyond the bounds of criticism? Those members who are un-American, abuse their code of ethics, steal or commit other unlawful acts, are no different than anyone else, and are to be treated the same as everyone else is. Just because the judiciary and legal profession are from the same family, does this mean that they can do no wrong? The Appellant will criticize those members who do not act in the American way of life, and will criticize those professions who aid and abet its members and do not act to clean its own house.

The Appellate Court stated that "when a helping hand is extended, as was done in this case, he bites the hand". If there was a helping hand extended, then the Appellant sure missed it. Exactly where was this done? If there was a hand, it was extended in the other direction.

Also, in the Opinion of the Appellate Court, the court is quoted as saying that "the Appellant devotes most of his contention to his opinion that the judiciary is schooled in deceit, dishonesty and insincerity". Is the Appellant to understand that the judiciary receives no training in deceit, dishonesty and insincerity? These are some of the very common denominators which bring about the day to day activity in our courts. Without some understanding of what these are, how can the judiciary be expected to cope with the problems they are faced with? Appellant has not attended law school, but it would seem incredible that no such training is given. If there is none, then it would appear that our judicial officers are not equipped for the job they are doing and, that they are where they are simply because they have been able do a good selling job on someone.

The Appellate Court's Opinion was a weak attempt at whitewashing the alleged libel and slander suit. Instead of dealing with the issue and the evidence in the record, the Appellate Court tried to draw attention away from the case by attacking the Appellant. The tone of the Opinion is evident; and the points of contention raised by the court are not even that relevant to the case. Generally, such a mood can be expected when there is a lack of substantial argument to draw conclusions in the proper judicial vein. In other words, when beaten, resort to ridicule and character assination as a means of achieving the desired end. These have been favorite and effective tools used many times.

This case is appealed for the reason that there was a denial of due process of law and the equal protection of the laws. This right is guaranteed by the Fourteenth Amendment of the United States Constitution. The jurisdiction of this court lies in the inferior court clause of the U.S. Constitution which extends judicial power to inferior courts in all cases, in law and equity, that arise under the U.S. Constitution. Jurisdiction also lies in Article I,

the Bill of Rights of the Ohio State Constitution.

The fact that the courts did not apply the same established procedures with the Appellant as it did with the Appellees is a discrimination in the administration of justice and a denial of due process and equal protection of the laws. The fact that the trial court remained silent on Appellant's Motion for Default; remained silent on Appellant's Change of Venue; remained silent to many of Appellant's inquires and communications; and the attitude of the Appellate Court which is apparent, cannot be considered as being equal, and the record will show it.

Equal is alike; uniform; on the same plane or level with respect to efficiency, worth, value, amount, or rights. People v. Hoffman, 116 Ill. 587, 5N.E. 600. Am Rep. 793. The equal protection of the laws of a state is extended to persons within its jurisdiction, within the meaning of the constitutional requirement, when its courts are open to them on the same conditions as to others, with like rules of evidence and modes of procedure, for the security of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; when they are subjected to no restrictions in the acquisition of property, the enjoyment of personal liberty, and the pursuit of happiness, which do not generally affect others; when they are liable to no other or greater burdens and charges than such as are laid upon others; and when no different or greater punishment is enforced against them for a violation of the laws. State v. Montgomery, 94Me. 192, 47 A.165. The lower courts have not been open to Appellant on the same conditions as to the Appellees, with like rules of evidence and modes of procedure.

This is another case of the courts continuing prejudiced conduct as practiced against a non-ABA litigant.

The court is asked to reverse the lower court's decision.